

**SUPREME COURT**  
**STATE OF CONNECTICUT**

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**S.C. 19245**

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**REBECCA NATION-BAILEY**

*Plaintiff-Appellant*

**v.**

**ADRIAN PETER BAILEY**

*Defendant-Appellee*

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**APPELLEE'S APPENDIX – PART II**

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**TO BE ARGUED BY:**  
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FST FA 06 4008827 S : SUPERIOR COURT  
REBECCA NATION-BAILEY : JUDICIAL DISTRICT  
VS. : STAMFORD/NORWALK  
ADRIAN BAILEY : MARCH 21, 2012

BEFORE THE HONORABLE ROBERT MALONE, JUDGE

A P P E A R A N C E S :

Representing the Plaintiff:

ATTORNEY DAVID RUBIN

Representing the Defendant:

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Recorded By:  
Carrie Parker

Transcribed by:  
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Court Recording Monitor  
123 Hoyt Street  
Stamford, Connecticut 06905

1           ATTY. RUBIN: Okay. Nothing further. Thank  
2           you.

3           THE WITNESS: Okay.

4           THE COURT: Any questions?

5           ATTY. DONALDSON: None.

6           THE COURT: Step down.

7           THE WITNESS: Thank you.

8           THE COURT: All right. There was one exhibit  
9           that had to be copied and redacted, if I'm not  
10          mistaken.

11          ATTY. DONALDSON: I have one document, yes.

12          THE COURT: All right. And then you're both  
13          going to go into final argument; or is there other  
14          evidence?

15          ATTY. DONALDSON: No other evidence.

16          ATTY. RUBIN: That's all we have, Your Honor.

17          THE COURT: All right. What I'm going to do, is  
18          I'm going to excuse myself and see if Mr. Diamond's  
19          there, because there's a copier in his office that  
20          maybe we could use to do that.

21                 Would you mind doing that?

22                 We'll go off the record.

23                 (Off-the-record.)

24          THE COURT: All right. So this is the redacted  
25          or whatever. Correct?

26          ATTY. DONALDSON: Yes, Judge.

27          ATTY. RUBIN: No objection, Your Honor.

1 (The document was marked Exhibit K full.)

2 THE COURT: All right. Now how long do you  
3 think you're going to need for final argument, each  
4 of you?

5 ATTY. DONALDSON: No more than five minutes on  
6 my side.

7 ATTY. DONALDSON: Five to 10 minutes, Your  
8 Honor.

9 THE COURT: All right. Now having said that, do  
10 you think you would need a few minutes to think it  
11 through, or are you're all set?

12 ATTY. RUBIN: All set, Your Honor.

13 ATTY. DONALDSON: Ready.

14 THE COURT: All right. I'm just asking.

15 All right. And just so your respective clients  
16 understand, it doesn't matter to me, because it's all  
17 going to be heard, whether we do one of your lawyers  
18 or the other one. In other words I don't care which  
19 lawyer goes first. And the only thing I would ask is  
20 that you separate your, as best you can, arguments  
21 with regard to modification and the contempts, so  
22 that we're not inter-weaving back and forth.

23 ATTY. DONALDSON: I'll go.

24 THE COURT: All right.

25 ATTY. DONALDSON: Your Honor, this is a  
26 matter before the Court, I'm first going to address  
27 motion 148, which is the motion we first began to

1       hear yesterday. It is our position that alimony  
2       should terminate based on the cohabitation of Ms.  
3       Nation with a Mr. Cooper.

4               I believe the evidence is sufficient if not  
5       overwhelming in association with Ms. Nation's  
6       relationship with Mr. Cooper. The testimony  
7       indicated I think quite clearly that she had a  
8       relationship with him; that they were engaged to be  
9       married, that she thought she was in fact pregnant,  
10      which connotes the fact that she may have had  
11      relations with him in a sexual manner.

12             In addition, there is direct testimony in  
13      admission of a document, a lease, which Mr. Cooper  
14      and Ms. Nation both signed, albeit guaranteed by Ms.  
15      Nation's mother.

16             There was also documents in evidence associated  
17      with the e-mails of Ms. Nation, particularly and  
18      especially identifying Mr. Cooper as an occupant of  
19      the property. They also indicate the need to have  
20      him held responsible for the liability. Altogether,  
21      there was other evidence which Your Honor has, vis-a-  
22      vis the transcripts which are admitted as Plaintiff's  
23      I believe, A and B.

24             Sorry. Defendant's A and B. Defendant's A is  
25      the deposition of Mr. Cooper. And within the  
26      deposition of Mr. Cooper, he indicated what would be  
27      at -- the deposition page 25, line 5 through 13, he

1 testified that he paid phone bills. On page 28,  
2 lines 14 to 17 he testified that he'd made I believe  
3 contributions to the food bills, eating out, et  
4 cetera.

5 At page 32, lines 1 to 8, Mr. Cooper testified  
6 that he maintained of kept boxes in the garage, a  
7 snowboard, a couch, a TV. On page 32, line 18,  
8 following to page I think it was 33, Mr. Cooper  
9 testified that he would stay over. And that's why  
10 his clothes were there.

11 At page 50 of the deposition transcript lines 15  
12 to 25 he testified that he would pay for half of the  
13 meals outside of the home.

14 So, vis-à-vis Mr. Cooper's transcript of his  
15 deposition he has indicated his connection to Ms.  
16 Nation. And Ms. Nation by communicating with others  
17 has indicated her living circumstances, jointly  
18 living together with Mr. Cooper.

19 Given that as a background I believe that the  
20 law is fairly clear. The party's agreement indicates  
21 that cohabitation -- is to be terminated as a  
22 contract term in the event -- alimony is to be  
23 terminated in the event that cohabitation is found.  
24 Cohabitation is a factor. It is not to be looked at  
25 for the reduction of and/or modification of alimony.  
26 It is looked at as a terminating factor.

27 And therefore, it is our request that this Court

1 terminate the obligation for Mr. Bailey to pay  
2 alimony effective at least as of the signing of the  
3 lease agreement, which it was dated I believe  
4 December 7, 2007. Sorry. December 7, 2007.

5 The lease effective date, I understood, or at  
6 least I can see from the lease instrument itself,  
7 indicated an occupancy of by December 15<sup>th</sup>.

8 So I'm just pointing that out to Your Honor.

9 As it relates to the potential for a credit in  
10 association with the termination of alimony, my  
11 client would ask if there is a credit to be applied  
12 that it be applied to any of his unpaid child support  
13 obligation, which might include unpaid medical,  
14 dental or other expenses in regards to the minor  
15 child.

16 If there's any credit in excess of his  
17 obligations for child support that they be placed in  
18 an account for the benefit of the minor child for his  
19 college education.

20 The understanding at least that I have, is that  
21 California is going to determine the dollar amount of  
22 child support, and/or any other pertinent items such  
23 as the un-reimbursed medical/dental obligations. And  
24 I do recall brother counsel indicating that they are  
25 allowing California to deal with the contempt motion  
26 in association with that matter.

27 So I believe it would be jurisdictionally



1           weighted heavily, obviously, on the reduction of the  
2           debts that she has.

3           I would ask that the Court not find Mr. Bailey  
4           in contempt as he has not been given the ability to  
5           negotiate with those creditors, or to conclude any  
6           efforts that he may have expended in order to reduce  
7           their dollar amounts.

8           And lastly the reimbursement of 2006 tax  
9           liabilities, I understand and I think that the Court  
10          has heard the evidence that the liability is a  
11          determined sum; that there is a balance due, and that  
12          my client should be given full credit of the \$2,117  
13          that he's paid through the 2009 tax refund being  
14          applied to the 2006 tax return.

15          My client's happy to or has indicated on the  
16          stand that he is responsible for the balance of that  
17          tax liability.

18          And lastly, as it relates to the Mercedes in  
19          particular, I believe the testimony was quite clear  
20          that the Mercedes in fact, the debt was paid as it  
21          was directed to be done, at page 13 in the  
22          handwritten form of the divorce agreement. And in  
23          fact further paid beyond that date. And I would ask  
24          the Court not to accept the testimony of Ms. Nation,  
25          in that regard and credit the testimony of Mr. Bailey  
26          in that regard.

27          I thank you for your time, and I will have our

1 proposed, our memorandum of law on Friday at noon, as  
2 originally agreed.

3 THE COURT: All right. One other question  
4 before you sit down. With regard to -- I believe you  
5 discuss as to your motion number 130 --

6 ATTY. DONALDSON: Yes, Judge.

7 THE COURT: -- with regard to modification that  
8 there was agreement between counsel that depending  
9 upon what the decision is, but that if it was taken  
10 that there should be a modification, it would be  
11 retroactive to November of 2010.

12 ATTY. DONALDSON: I indicated that we agreed  
13 service was obtained on that date. Hopefully I did  
14 not mischaracterize the representation. I would ask  
15 the Court to relate back to the date of service.

16 THE COURT: So, today's service in November of  
17 2010.

18 ATTY. DONALDSON: Yes, Judge.

19 THE COURT: And then with regard to number  
20 148 --

21 ATTY. DONALDSON: Yes, Judge.

22 THE COURT: What are you arguing is the  
23 retroactive to?

24 ATTY. DONALDSON: I'm not asking for  
25 retroactivity of any nature. The impact of the  
26 contract language is self-executing as may be  
27 understood in the Kritchko (Phonetic) versus Kritchko

1 file. I believe in DeMaria as well, it's self-  
2 executing. So as of the moment of the cohabitation,  
3 from that moment forward, the obligation to pay  
4 alimony terminated. And therefore it's not  
5 retroactive in any respect.

6 And there is case law indicating that the sums  
7 that were overpaid are in fact reimbursable to the  
8 person who paid them.

9 And the only way to determine what that is, and  
10 I smile, because California is going to determine  
11 what the child support will be, and that will then  
12 tell us what our credit is if any, should the Court  
13 decide in our favor in regard to that motion.

14 THE COURT: Okay.

15 ATTY. DONALDSON: Anything further, Judge?

16 THE COURT: No.

17 ATTY. RUBIN: Your Honor, with respect to the  
18 retroactivity of the motion to modify number 140 of  
19 the Court file is the affidavit of service. And it  
20 indicates that the motion was mailed on November  
21 17th, 2010. So, that would be I think, under our  
22 law, considered to be the date of service.  
23 Retroactivity is of course discretionary.

24 THE COURT: Yes. Yes.

25 ATTY. RUBIN: It's not required.

26 THE COURT: No, I just wanted to know what the  
27 earliest would be.

1           ATTY. RUBIN: November 17<sup>th</sup>, 2010 --

2           THE COURT: Okay.

3           ATTY. RUBIN: -- I don't think is disagreed.

4           Cohabitation is a different thing, Your Honor.

5 Cohabitation on page 7, "unallocated alimony and  
6 child support shall be paid until the death of either  
7 party, the wife's remarriage or cohabitation as  
8 defined by Connecticut General Statute 46b-86b."

9           Cases we're both going to give you in the brief,  
10 Your Honor, but that is not self-actuating or self-  
11 executing because you can't do cohabitation under  
12 46b-86b without one: a finding of cohabitation, and  
13 two: a finding of change of expenses.

14           So, that cannot be self-executing. It's not  
15 self-executing. We'll cover that in our brief. But  
16 one: they weren't living together, they were dating.  
17 Did not change expenses, and it's not self-executing.

18           So we think that the Court will deny the  
19 cohabitation point.

20           The -- Mr. Bailey is in contempt. He's in  
21 contempt of paying the August 2009, \$3500 payment,  
22 the January 2010, \$3500 payment, and the August 2010,  
23 \$3500 payment. Found in contempt: owes \$10,500.

24           Now, the fact that he was found in contempt is a  
25 finding that his failure to pay those months was  
26 willful and that he was able to pay that. Now, our  
27 Practice Book Section 25-36 contemplates just such a


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: MARCH 21, 2012

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford, Connecticut, before the Honorable Robert Malone on the 21st day of March 2012.

Dated this 29th day of March, 2012 in Stamford.  
Connecticut.

  
\_\_\_\_\_  
Carrie Parker  
Court Recording Monitor